



# Webpapers on Constitutionalism & Governance beyond the State

Year 2004 | No 4

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ISSN: 1756-7556

conWEB – webpapers on Constitutionalism and Governance beyond the State

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Democracy and the European Constitution:  
Majority Voting and Small Member States<sup>1</sup>

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Abstract

The purpose of this article is to shed light on the relation between large and small member states with regard to the majority principle. Since Maastricht at the latest the institutional discussion centers around the question of how to devise a decision system which pays equal attention to the interests of small and large states in the European Union. This article challenges several underlying assumptions: that size is an important factor determining the political clout of a member state; the existence of ‘natural’ interest divergences and the competitive nature of the European polity. Finally, it questions the intrinsic relation between majority voting and democracy.

Keywords: Democracy, majority voting, European Convention, legitimacy.

Disciplinary Background: Political Science

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<sup>1</sup> I am grateful to Richard Carney, Maarten Vink and Monika Mokre for their comments. The usual disclaimer applies.

## I. Introduction

The Declaration of Laeken from 15 December 2001 states that European citizens are calling for “a clear, open, effective, democratically controlled Community approach, developing a Europe which points the way ahead for the world” (2001: 3). What they got from the Convention about the Future of Europe<sup>2</sup> is an extension of the qualified majority procedure in the Council of the European Union based on a system of double majority: for the adoption of decisions “a majority shall consist of the majority of member states, representing at least three fifths of the population of the Union” (Art.24.1). During the nocturnal negotiations of Nice this model was rejected by a large number of member states whereas a new weighting of votes, as foreseen in the Amsterdam protocol, was favoured vehemently by France. The outcome of Nice was best described by Commission President Romano Prodi’s comment that the system will work but “is not understandable” (*Agence Europe*, 12 December 2000: 1). But this system, which will remain the foundation of the European decision-making process until 2009, was regarded as insufficient by the Convention following the wide-spread belief that Europe’s institutional arrangement needs to be more efficient because of the ‘looming’ enlargement of ten new member states.

Since Maastricht at the latest the scepticism of the small member states towards the institutional reform suggestions of the large ones is visible.<sup>3</sup> These reforms were understood as direct attacks against the sacrosanct principle of equality even if the political practice, i.e. the weighting of votes in the Council, for a long time already compromised the equality of the member states. So, it could be expected that once the Convention came to an end, the system of double majority voting so much favoured by Germany and France would meet resistance from the states who regard it as a gross disadvantage for them. It was impossible to resolve the impasse during the Italian presidency in the second half of 2003 and it remains to be seen if the Irish will be more successful. The reform of the Commission, i.e. the reduction of the number of Commissioners, the introduction of a permanent Council President and the extension of qualified majority voting, contribute towards the small states’ worries

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<sup>2</sup> Henceforth Convention.

<sup>3</sup> See e.g. the memorandum of the Benelux countries at the Lisbon Council, *Agence Europe*, 20 June 1992.

about the emergence of a directorate of big states. This interpretation seems to be based on several misunderstandings:

- *Size matters*

A causal connection exists between the size of a country and its influence on the European policy-making process. Every institutional and procedural reform has to follow the “Brittan-doctrine”: “stopping the big fish from eating the small fry, and preventing the small fry from ganging up on the big fish” (Brittan 1994: 232).

- *‘Natural’ interest divergence*

Between rich and poor, old and new, northern and southern, transatlantic and European oriented, fiscally prudent and imprudent member states exist enormous interest divergences. The application of the majority principle secures the rationality of the decision, only permanent minorities have to be avoided.

- *Europe as competitive polity*

European decisions are majority decisions which are the result of tough bargaining between national positions where every party tries to secure its benefit at the cost of others. Only the majority principle saves Europe from a new bout of Eurosclerosis á la seventies and eighties. It guarantees the effectiveness and efficiency of decision-making even in the face of ten new member states which still have to be ‘socialised’.

- *Democracy is the rule of the majority*

*Differentia specifica* of democratic systems is the ultimate recourse to the principle of majority. It maximizes the number of people who exercise self-determination and it guarantees the objective and moral righteousness of decisions.

Time and again these understandings have been proven empirically wrong. Their persistence nevertheless raises a series of questions connected to the understanding of democracy as majority rule. If the size of a country defines its interests and share of votes in a (supra-national) system of majority decisions in a competitive political environment, majority democracy runs into the danger of systematically disregarding the rights of smaller countries or infringing upon the interests of the big ones. These are exactly the arguments brought forward either to defend an extension of qualified majority voting or to condemn it.<sup>4</sup> But are they grounded in the empirical reality of European integration?

Since we have to understand the majority concept as a procedure to reach decisions (and not as a basic democratic principle) we need to explore which conditions are favourable to its application and what are the dangers involved. The dangers were pointed out long ago by authors such as John Stuart Mill (1863) and Alexis de Tocqueville (1835) as well as by contemporary scholars like Giovanni Sartori (1987) and Robert Dahl (1971) warning of the oppression of minorities. Nevertheless, the majority rule is hailed as the only instrument which keeps the EU away from deadlock. The large member states in particular insist on the procedure of double majority but it seems that their claim is based on ideas which were formulated during the rise of the nation-state and which were dubious even for the so-called sovereign nation-state.

From Jean-Jacques Rousseau onwards many political theorists have believed a homogenous citizenry to be a pre-condition for majority decisions.<sup>5</sup> It is the common collective identity which makes the minority accept the decisions of the majority<sup>6</sup>, if this identity does not even guarantee unanimity.<sup>7</sup> A condition which, if it was ever true, does certainly not apply to modern fragmented societies characterized by social

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<sup>4</sup> This cleavage was also visible in the Convention on the Future of Europe. The Franco-German paper in January 2003 sparked furious responses by the representatives of small states in the plenary especially on the plans for a long-term presidency of the European Council.

<sup>5</sup> See especially Ch.2 of Book IV. in Jean-Jacques Rousseau's *The Social Contract and Discourse* 1762. Aristotle emphasized the importance of *homonoia* and *philia politike* as a pre-condition for reaching happiness which can only be achieved within a polity which necessarily has to be manageable. See, Aristotle, *Nicomachean Ethics*, esp. Book X.; Richard Klonoski (1996).

<sup>6</sup> The majority principle was emphasized by the so-called contract theory: see John Locke, *The Second Treatise of Government*, § 97, Rousseau, *Contrat Social*, Book II, 3 and 4.

<sup>7</sup> This line of argument was taken up by parts of the German "Staatsrechtslehre". See Paul Kirchhof (1995, 2001), Dieter Grimm (1995, 1999), Stephan Hobe (2003).

mobility and the plurality of individual *eudaimoniai*.<sup>8</sup> The fragmentation of societies and the process of European integration which severely affects the traditional democratic arrangements built for the nation-state together constitute the major challenge for democracy. In the last years democratic theory has focused on questions of rational decision-making (Sen 1999; Barry 1970), the relation between markets and democracy (Beetham 1993; Wainwright 1994), democracy and difference (Young 1992; Kymlicka 1995; Phillips 1994, 1995; Mills 1997, Taylor 1998), new forms of participation (Barber 1984; Hirst 1994; Parry/Moyser 1994), deliberation (Manin 1987; Cohen 1989; Dryzeck 1990, 2000; Fishkin 1992; Blaug 1996; Bohman/Rehg 1997; Elster 1998) and the future of democracy under the conditions of radical technical and social change (Bobbio 1987; Mouffe 1988, 1993; Trend 1996; Hague/Loader 1999). Systematic studies on democracy under the conditions of supranational integration are still the exception (Weiler 1995; Curtin 1997; Abromeit 1998; Jachtenfuchs 1998; Lord 1998; Greven/Pauly 2000; Warleigh 2003) in the huge body of literature on European integration. But it is the process of integration which makes the reassessment of key concepts like majority-rule necessary because we can hardly expect a system which was developed under Roman Law (Bobbio 1981; Gierke 1984; Simmel 1984), and subsequently tied to the nation-state, to work in a totally different setting like the EU. This assumption rests on a rejection of a Straussian (or Hegelian) view of history which assumes a catalogue of eternal questions without taking into account that these very questions (and not only the answers) change depending on specific-socio-political conditions, thus making a simple transfer of one set of answers to a different set of questions unpromising at best. We have to bear in mind Norberto Bobbio's words (1987: 37) that "the project of political democracy was conceived for a society much less complex than the one that exists today."

In order to shed some light on the aforementioned questions we first need to ask if there really exists a cleavage based on size between the member states. Section 2 deals with various political science approaches to differentiate between large and small member states as well as with the question of whether EU member states have divergent interests. The following part focuses on the decision practice in the Council

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<sup>8</sup> Best translated by *happiness*.

of the EU; the central institution always scolded for being secretive and undemocratic. Section 4 questions the intrinsic relation between democracy and the majority principle. Apart from presenting some conclusions, the final section follows good academic practice and poses more questions than answers.

## **II. Size matters<sup>9</sup>**

The interest scholars have taken in problems resulting from the size of states with regard to international relations in general has so far had little reverberations in the studies on European integration. The issue has only gained some relevance in the course of the intergovernmental conference (IGC) leading to the Treaty of Nice (Bond/Feus 2001). Unsurprisingly, the row about small and big broke out rather vehemently, with the main bone of contention being the voting weights of the members in the Council of the EU in view of the next enlargement. A row which was continued in the constitutional Convention where the division between big and small states was again visible (Norman 2003). But we have to take the specific nature of IGCs into account: they generally lead to new institutional arrangements and thus are of constitutional importance. IGCs are about a new balance of power between the European institutions as well as between the member states. Hence, scholarly judgements and insights cannot easily be transposed onto the everyday policy-making process. Moreover, the picture might change from one policy field to another, if not in principle, certainly in important details.

In the literature on International Relations several attempts have been made for a quantitative approach aiming at the definition of small states. Perhaps the most extensive analysis is the UNITARY-study “Small States and Territories: States and Problems” (Rapaport et al. 1971) which measures size by three variables: area, population and Gross National Product (GNP). But the definition of the size of states can also be undertaken by measuring their potential influence, which also uses to some extent quantitative variables. Robert O. Keohane (1969) distinguishes small and big by focusing on whether their leaders think their states have a decisive impact on

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<sup>9</sup> This section is partly based on a book contribution by the author and Sonja Puntscher Riekmann, see Pollak/Puntscher Riekmann 2002.

the international system. Others have defined a small state as being unable to exercise its political will, or protect its interests, by power politics (Jaquet 1971) or as a state that does not have the capabilities to guarantee its own security (Rothstein 1968). It was also argued that it is not possible to arrive at more specific definitions. Quite logically, but nevertheless hardly original, some of the literature contends that “the idea of small power is meaningless unless used relative to other states” (Bjøl 1971).

Whereas the economic literature focuses on the expected characteristics of the states’ economies, “the political literature takes as a starting point that a small state has a larger security problem and proceeds to examine the various available solutions” (Griffith/Pharo 1995: 29). The question of whether smaller states are able to influence larger states by forming alliances is a widely discussed issue. When theories have dealt with smaller states by “studying foreign policy the highest priority has been given to the study of the adaptive policy of small states in regard to the power politics of superpowers, or ‘big’ powers, and not to the participation of small states in integration processes. Thus, there is a special need for attention to the relationship between small states and integration.” (Kelstrup 1993: 137).

A more recent study (Thorhallsson 2000) applies Peter J. Katzenstein’s approach based on the economic characteristics small states have in common with regard to European integration. Peter Katzenstein’s basic assumption is that “size affects, in particular, both economic openness and the characteristics of the political regime” (1985: 80). He discerns three distinctive characteristics of the smaller states in Europe. Firstly, smaller states can be distinguished from larger ones in their economic openness which reinforces their corporatist arrangements. Secondly, the corporatist difference is evident in the three defining characteristics of corporatism: “an ideology of social partnership, a centralized and contested system of economic interest groups, an uninterrupted process of bargaining among all of the major political actors across different sectors of policy” (Katzenstein 1985: 80). And thirdly, corporatism also results from the distinctive party systems of the small states in Europe, where “political opponents tend to share power and jointly influence policy” (Katzenstein 1985: 80). Peter Katzenstein’s hypotheses are supported by the findings of Arend Lijphart (1999: 177) on interest group pluralism. His aggregated data shows a significant preference for corporatist structures in small states. It can be concluded



that small states indeed have, besides mere quantitative restrictions, different styles of policy-making compared to large states. However, this does not automatically mean that they have the same range of interests.

By applying and refining Katzenstein's approach, Baldur Thorhallsson (2000: 12) reaches the following conclusions for the policy fields 'Common Agricultural Policy' (CAP) and 'Regional Policy of the EU': Smaller states prioritize within these policy fields—they concentrate only on issues from which they gain considerable benefits in order to optimize the use of their personnel resources. The administrative working of the smaller states in the decision-making in CAP and in Regional Policy is characterized by greater informality and flexibility compared to the more formalized relations of the bigger member states. In questions of low relevance they have more room to maneuver. Size obviously also affects the relationship between the member states and the European Commission: The larger states are able to exert a stronger influence upon the Commission. The smaller states compensate for this by using the characteristics of their small administrations to develop a special relationship with officials of the Commission. Secondly, due to the limited capacity of the administrations of the smaller states, they rely more upon the Commission to get their proposals through the Council. Concerning the negotiation style, Baldur Thorhallsson's study has shown that the distinctive corporatism of Peter Katzenstein's theory does not provide a satisfactory explanation for the behavior of small states in the decision-making process of the CAP and the Regional Policy. This may be because in negotiations larger states are as restricted by their domestic interests as the smaller states. However, size does not seem to be a determining factor of state influence at the European level.

### **III. The EU as competitive polity**

The most important decision-making body apart from the Committee of Permanent Representatives is the Council of the European Union. Qualified majority voting is the exception, the principle of *mufakat* (Haas 1973), i.e. the principle of unanimity built through discussion rather than voting. Besides the formal allocation of weighted votes, all states try to increase their power in the Council. It is tricky, though, to

establish what endows particular participants with effective power. Much attention has been given to states' relative voting power (Hosli 1994; Widgrén 1994). The Banzhaf power index and the Shapley-Shubik power index both show similar results: a relative decline in the voting power of larger member states and a relative increase in the voting power of smaller member states. But small member states do not actually outvote large member states in any systematic way. When votes are taken, it is almost unheard of for two large member states to be outvoted. On unanimity decisions it is exceptional for a single small member to sustain opposition and highly exceptional for a small member state to attempt a veto on decisions otherwise subject to majority voting (comp. Hayes-Renshaw/Wallace: 268). Various coalitions are very common while long-term stable alignments are almost never seen.<sup>10</sup> Moreover, the fact that the EU deals simultaneously in so many policy areas makes it possible in principle for negotiations to embrace a wide variety of topics and thus be subject to cross-trading (Hayes-Renshaw/Wallace 1997: 18).

The large majority of decisions are not taken in the Council, but in the Committee of Permanent Representatives known by its acronym Coreper. Only a small number of contested topics are handed to the Council as the so called "B-points". Hayes-Renshaw and Wallace (1997: 40) estimate that 85-90% of the decisions in the Council are based on the "A-points", i.e. points where agreement has already been reached previously either in Committees and working groups (70%) or the Coreper (15-20%). This leaves 10-15% for the ministers in the Council where they actually have to decide. The decision-making style in the working groups and the Coreper is characterised by a "shared commitment to finding solutions" (Lewis 1998: 479), a common socialisation and devotion to European ideals, a dynamic process of *l'engrenage* and a culture of compromise. It is the Coreper which serves as a role

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<sup>10</sup> With the exception of the alliance between the Benelux countries which is explicitly referred to in Article 233 TEU. The most visible alliance in former times has been the Franco-German axis. In both cases the cooperation has been more concerned with the overall development of the EU rather than with specific policies, and both alliances have come under considerable strain in recent time. A new initiative calling for greater cooperation between the Nordic states is the Northern Dimension Initiative launched in 1997 by Finland (see Arter 2000) and the so-called Strategic partnership between Austria and some of the new member states – an initiative which can be considered as dead on arrival since very soon these states told Austria that they conceive a certain inconsistency between Austria initiating this partnership and Austria, at the same time, strongly arguing for transition periods in e.g. the labour market.

model for solution-oriented European decision-making. The size of the respective member state does not play a role.

By way of conclusion we can say that the ability of a state to influence its environment within the framework of the EU largely depends on a favorable constellation of circumstances. Recognizing the right moment for launching an initiative or knowing when to put the brakes on depends on competent pundits informing their respective capitals about important trends. Sometimes this can amount to a situation of mutual siege—but s/he who is the first to grab the initiative is also the one to gain the most. Winning and blocking coalitions in the Council is typically constructed by the convergence of short and medium-term interests, not primarily to attain a specific voting threshold. Everything depends on making a proposition “yesable” to as many participants as possible (Fisher/Ury 1982). Alliances do not exist qua natural predispositions, but are formed due to converging and changing interests. Permanent minorities are thus avoided, and Madison’s principle of interest divergence as a safeguard for democracy works out at the European level: “Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other.”(The Federalist No. 10, see also No. 51). Additionally, alliances might also be formed with the Commission and to an increasing degree with the factions of the European Parliament. Thus the size in terms of influence is a variable rather than a constant.

Policy-making in the EU is dominated by the search for compromise. Even the constant extension of the areas where qualified majority voting applies since the Single European Act did not change that. The possibility to apply this QMV does not function as a decision principle, but rather like the sword of Damocles. It is beyond doubt that this sword helps to find compromise, which is itself a guarantee for minimum influence on the results. But is this sword the *conditio sine qua non* of democracy?

#### IV. Democracy and the ‘principle’ of majority

There seems to reign a paradoxical relation between democracy and the majority principle. In theory, the majority rule tends to be regarded as the *differentia specifica* of democracy compared to other forms of rule. Hans Kelsen called the majority rule “the relatively closest approximation to the idea of liberty” (Kelsen 1929: 9) In practice, however, we find no democracies based on the strict application of majority rule. Even the United Kingdom and New Zealand, the archetypes of the Westminster model, deviate from majoritarian decision-making rules (see Lijphart et al. 1988: 12). There are innumerable arguments for and against the equalisation of democracy and majority rule. Thus, Robert Dahl (1989: 168) has his advocate of majoritarian democracy saying that “the problem of majority rule is a bog through which we could trudge until we are both exhausted.”

The fear of the majority can be found in political philosophy for quite a time: it is shared by Alexis de Tocqueville (sections XV and XVI), John Stuart Mill (1991: 144), the authors of the Federalist (No. 10, 51) and Anti-Federalist papers (esp. the essays of ‘Brutus’), John Calhoun (1995) and many others. More specifically, for Alexis de Tocqueville and John Stuart Mill it is the fear of a spiritual tyranny of the majority which builds a wall around the thinking of the individual and constructs a suffocating social conformity. But these authors invoke the fear of absolute power and not the fear of a majority. In western-liberal societies we find the emphasis on free opinion and the plurality of media, the defense of the private sphere against state interference as countermeasures. The result is societies whose members enjoy a degree of freedom which was unthinkable just decades ago. There is hardly a combination of personal affections, political positions and activities which are not possible. But this is not what we mean by the concept of majority as a procedure (see Sartori 1987). This concept determines that political decisions have to be taken according to the will of the majority. Giovanni Sartori (1987: 221) points out “there are at least three magnitudes subsumed, often confusedly, under the majority rule heading: (a) qualified majorities (often a two thirds majority); (b) simple or absolute majority (50.01 per cent); (c) relative majority, or plurality, that is, the major minority (a less than 50 per cent majority)”. He is undeniably right, but for the perceived minority (no matter if it is a big or small minority), it makes no difference which of the three magnitudes

applies. The crucial fact is that minority ideas about the ‘good life’, their *eudaimoniai* are not realized or even actively prevented. Their only protection is constitutional provisions shielding minority and opposition rights<sup>11</sup> and the existence of non-majoritarian institutions which are indispensable for the functioning of democracy (Majone 1996, 1998).

The alluring value of the equalisation of democracy and majority rule lies in the ostensible plausibility of the majority principle. Who would *prima facie* argue against Marquis de Condorcet’s proposition that “four eyes see more than two”? Who would doubt Kenneth May’s (1952) pleading for the decisiveness, neutrality, responsiveness, anonymity and fairness of majority decisions? Who would question the obvious fact that majority rules allow the greatest number of people to enjoy maximum freedom and, moreover, that it is tremendously efficient compared to other procedures? But a more detailed analysis shows that this plausibility is deceptive (see the excellent article by Risse 2004; see also e.g. Riker 1982).

The conditions for the use of majority voting are very restrictive and only arise in exceptional circumstances. Very seldom do we have to choose between merely two alternatives. Modern societies are not only characterised by complex problems but also by complex solutions.<sup>12</sup> Even incremental solutions, e.g. the dissection of situations into pairwise votes, can lead to decision dominated by a tiny minority (Condorcet Paradox, see e.g. Jones et al. 1995; Kurrild-Klitgaard 2001). Moreover, collective decisions are not only taken by the ranking of options. Also, the intensity of the preferences has to be taken into account. We may be willing to select the president of the European Political Science Association by majority, but not to apply the same rule to the question of whether the EU is an international organisation, a state-in-the-making or a *suis generis* system. Existing information asymmetries add to the doubts about the fairness of majority decisions since it infringes on the basic democratic principle of equality.

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<sup>11</sup> The institutional answer also includes e.g. a proportional election system. See Nohlen (1996).

<sup>12</sup> A fact also recognized in the Napolitano Report (EP 2001, p.11): “the institutions of representative democracy are going through a phase of serious difficulty ... for reasons that are linked not only to the peculiarities of European integration . but also to profound changes in our societies.”

Political theory has camouflaged the conflict between theory and practice in a twofold way. First, by pointing out that majority rule does not mean that this majority “would or should do anything it felt an impulse to do.” (Dahl 1956: 36). In addition to the above mentioned constitutional restraints there are more informal, ethical and cultural restraints. Now, this seems a little bit inconsequential if we refer to the majority principle as a last resort which will only be used in exceptionally tense times. To rely on informal safeguards in times of crisis requires a lot of benevolence and has hardly worked in Western societies in the first half of the 20<sup>th</sup> century. Second, political theory has rediscovered the discursive qualities of democracy. The basic assumption of the deliberative theory of democracy takes up John Dewey’s insight that even the rule of the greater part “is never merely majority rule [because] counting of heads compels prior recourse to methods of discussion, consultation and persuasion.” (Dewey 1927: 207).<sup>13</sup> Deliberation allows for the exchange of rational<sup>14</sup> arguments. It is not the normative power of the actual but the rationality of arguments and their acceptance beyond ideological standpoints and political power, as well as the possibility of learning which guide deliberation. It is the chance for discursive exchange which guarantees the acceptance of the final outcome since we must not forget that at the end even deliberationists have to decide (Saward 2000). Only in exceptional cases will the deliberative process lead to a unanimous consensus. Has the majority principle now sneaked in through the backdoor again? The existence of radical and persistent contentions or Rawlsian dilemmas render consensus a rather unlikely outcome – no matter how long we deliberate. The solution is not the search for consensus but for compromise or “incompletely theorized arguments” (Sunstein 1997). Consensus requires the abandonment or the overlapping of ideological positions. The deliberation process uncovers solutions which are acceptable for participants. This solution might lie in the intersection of ideologies, and is thus based on the relative proximity of the standpoints. Solutions which were not already – at least in principle – existent in the political world view of a participating faction are excluded. On the other hand, compromise is the agreement on a solution which allows

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<sup>13</sup> The now famous quotation from Pericles Funeral Speech “Our constitution ... is called a democracy because power is in the hands not of minority but of the greatest number.” at the very beginning of the Draft Constitution seems to be an unhappy choice. Given the virtues of deliberation it might have been better to read to the end of Pericles’ speech where he says: “...instead of looking on discussion as a stumbling-block in the way of action, we think it an indispensable preliminary to any wise action at all.” (Thucydides, The History of the Peloponnesian War, II. Book).

staying by one's ideological positions. A compromise is not the result of preference changes but the belief in the obligation to find solutions to save the polity from total breakdown. Ankersmit (2002: 143) emphasized the paradoxical character of compromise: "on the one hand, as in the case of consensus, one stands by one's ideological conviction, but, on the other hand, one is prepared to follow a line of political action more or less inimical to that conviction."

Thus, the equalisation of democracy with majority rule only makes limited sense. We should also take other characteristics of democracy seriously. Herfried Münkler (1995), for instance, has pointed to the fact that democracies vary from other forms of rule when it comes to the visibility and visualisation of power. Democracies very seldom erect monuments for their political leaders; despotism lives on the visibility of power, military as well as civil power. In terms of visibility, democracies accentuate the transparency of procedures whereas other regimes tend to keep the decision system in the dark. Other facets like the right to appeal and the constitutionality of laws remind one of the ever provisional character of democratic decisions as long as they stay within the constitutional framework.

*Philia politike*, the ancient Greek concept of "political friendship" or solidarity, is less necessary for the acceptance of majority decisions but is a condition for the intelligible participation in the deliberative process. Acceptance of a decision is also based on the legality and legitimacy of the political process as well as on its 'retracability'.<sup>15</sup> The quest for more transparency at the European level is the expression of this understanding. Thus, the variety of negotiation levels and forums, of working groups and committees,<sup>16</sup> is not the manifestation of an undemocratic system but rather the only possibility to allow for the search for compromise – compromise instead of majority decisions (see also Neyer 2004). It is in the small working groups where trust and mutual understanding can be built and thus recourse to majority voting is unneeded. The rooms for deliberation and decision at the

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<sup>14</sup> It seems important to me also to include irrational arguments because the "refinement of sentiments" (Madison, Federalist No. 10) through the character of public exchange is a doubtful safeguard.

<sup>15</sup> This was emphasized by the Committee of Independent Experts' first report (On Allegations of Fraud, Mismanagement and Nepotism in the European Commission, 15.3.1999) "The principles of openness, transparency and accountability ... are at the heart of democracy and are the very instruments allowing it to function properly. Openness and transparency imply that the decision-making process, at all levels, is as accessible and accountable as possible to the general public."

European level are identical but hardly transparent.<sup>17</sup> This elite deliberation happens at the expense of democratic accountability and representativity. The antagonism between transparency, accountability and representativity and the maze of European decision-making seems to be the price for European compromise democracy. But as a majority democracy, Europe can hardly work.

## **V. Conclusions**

The political practices in the Council of the EU and the Coreper clearly show that majority decisions are the exception and not the rule. So far, Europe follows the experiences of the national political systems: compromise and not consensus dominates the daily political life of Europe. The position of the member states is not dependent on their size, but largely influenced by their ability to form alliances and forge compromises. It is beyond doubt that there exists a lot of interest divergence between the member states of the Union. This divergence is the result of a multitude of factors: policy-styles and policy-profiles, constitutional history, economic structure, welfare systems<sup>18</sup> etc. A permanent cleavage running along the line of size in terms of area, population and GNP cannot be discerned. Rather, short- and mid-term alliances and immediate political concerns dominate supra-national policy-making. These alliances hardly follow the logic of quantitative variables. There is as much agreement between France and Germany as between France and Slovenia. It seems that the practice of decision-making in the Union follows the assumptions of deliberative theory whereas political rhetoric applies the theory of majoritarian democracy.

The German and French insistence on the principle of double majority can be interpreted as the search for an ‘insurance’: the so far unique process of a “big bang” enlargement requires – according to some founding members – instruments which safeguard the European political system from deadlock. This is aggravated by the fact that towards the new member states a certain – not always understandable –

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<sup>16</sup> What Joseph Weiler (1998) called the “underworld” of the European system.

<sup>17</sup> Whereas these rooms were not identical in the case of the Convention: the body set up for deliberation was not the same body who was able to take decisions. Thus, a change of art. 48 TEU should urgently be considered.



skepticism reigns. Building trust, which is the necessary requirement for the search for compromise, takes time.<sup>19</sup> Hundreds of working groups and committees in the EU system allow for this trust to develop. The downside of this maze is a striking lack of transparency and accountability which contributes to the already profound alienation of citizens from their representatives. Strengthening the control rights of the European Parliament as well as the scrutinizing powers of national parliaments seems to be the right way to combine the virtues of expert deliberation and accountability.

This negotiation or policy style is also an important characteristic differentiating the European political system from an international organisation. Whereas in the latter negotiations are often conducted as zero-sum games, the EU is characterized by the search for compromise. Due to the prominence of institutional questions during the debates regarding the Maastricht Treaty in 1992, it is easy to get the impression that European politics is dominated by a quarrel between small and large member states. A closer look reveals the fact that even within these questions no permanent cleavages exist (see Puntischer Riekmann/Wessels 2004). Thus, the fear of the small member states is based on two misconceptions: (1) that there exists a natural alliance between the large member-states and (2) that the majority rule builds the normal decision-making procedure. This is, vice versa, also true for the large member states who fear an ‘insurgence by the dwarfs’.

When it comes to the theory of democracy, the challenge ahead lies in the lacking alignment between the rooms of deliberation and decision. The separation of these rooms was recently visible in the Constitutional Convention. It is beyond doubt that this Convention, compared to traditional IGCs, enjoyed a much higher degree of transparency, representativity and sometimes even efficiency.<sup>20</sup> But as long as there exists the possibility to pervert the results of public deliberation behind the closed doors of an IGC, this deliberation assumes the character and function of a buffer stop. The publics which are the source and reason for calling a system a democracy are

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<sup>18</sup> For an analysis of the impact of different political and constitutional traditions in the member states on their positions in the constitution debate see S. Puntischer Riekmann/W. Wessels (2004).

<sup>19</sup> French comments like the ones which could be heard during the Nice negotiations but also during the Iraq crises are not necessarily helpful to allow for trust building.

<sup>20</sup> But one has to bear in mind that the legitimacy of the Convention itself is rather doubtful since its members were **not** authorised by the people. This is one of the few similarities to the Philadelphia

blindfolded by a body which has no decisional powers. On the contrary, the daily decision-making of the Union is characterized by expert deliberation and decision but it suffers from a lack of transparency and a lack of accountability. Since we cannot expect the congruence of the two rooms of democracy – deliberation and decision – in the near future, the parliamentary control of the “underworld”, i.e. the working groups and committees, remains the yardstick by which to measure European democracy.

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Convention. Another similarity seems to be that constitutional conventions have to overstep their ‘mandate’ in order to be successful.

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